

Introduced by Senator Torlakson

February 21, 2006

An act to amend Sections 4216, 4216.2, 4216.3, 4216.4, and 4216.7 of the Government Code, relating to excavation around subsurface installations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1359, as introduced, Torlakson. Subsurface installations: excavations.

Existing law requires planned excavations near subsurface installations to be conducted in a specified manner that protects the subsurface installations from damage. Existing law requires an excavator to determine the exact location of subsurface installations using specified tools. If the excavator still cannot locate the exact position of the installation, existing law then requires the excavator to request the operator to provide specified additional information to help determine the exact location of the installation. Existing law provides that an excavator who has failed to comply with regulations, as provided, is liable for any damages unless the owner or operator has not complied with regulations, as provided.

This bill would require the excavator, if the excavation is within 10 feet of a high-priority subsurface installation, as defined, to hold an onsite meeting with the owner or operator to verify the location of the installation. This bill would allow only a qualified person to perform subsurface installation locating activities, require the best available technology to be used in locating activities, and require the operator to maintain plans for the subsurface installations. This bill also would require the regional notification center to provide an excavator with the operator's contact information if the excavator finds a discrepancy in the field markings and the plans, require the exact location of the

subsurface installation to be determined in a specified manner, and require an excavator to immediately notify the owner or operator when he or she discovers or causes damage to an underground installation. This bill would also provide that any operator who fails to provide the position of a subsurface installation will be liable for any resulting costs, as specified, that the excavator may encounter as a result of the discrepancy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4216 of the Government Code is
2 amended to read:
3 4216. As used in this article the following definitions apply:
4 (a) “Approximate location of subsurface installations” means
5 a strip of land not more than 24 inches on either side of the
6 exterior surface of the subsurface installation. “Approximate
7 location” does not mean depth.
8 (b) “Excavation” means any operation in which earth, rock, or
9 other material in the ground is moved, removed, or otherwise
10 displaced by means of tools, equipment, or explosives in any of
11 the following ways: grading, trenching, digging, ditching,
12 drilling, augering, tunneling, scraping, cable or pipe plowing and
13 driving, or any other way.
14 (c) Except as provided in Section 4216.8, “excavator” means
15 any person, firm, contractor or subcontractor, owner, operator,
16 utility, association, corporation, partnership, business trust,
17 public agency, or other entity which, with their, or his or her,
18 own employees or equipment performs any excavation.
19 (d) “Emergency” means a sudden, unexpected occurrence,
20 involving a clear and imminent danger, demanding immediate
21 action to prevent or mitigate loss of, or damage to, life, health,
22 property, or essential public services. “Unexpected occurrence”
23 includes, but is not limited to, fires, floods, earthquakes or other
24 soil or geologic movements, riots, accidents, damage to a
25 subsurface installation requiring immediate repair, or sabotage.
26 (e) “High priority subsurface installation” means petroleum
27 pipelines, high-pressure natural gas pipelines and pressurized
28 sewage pipelines.

1 ~~(e)~~

2 ~~(f)~~ “Inquiry identification number” means the number ~~which~~
3 ~~that~~ is provided by a regional notification center to every person
4 who contacts the center pursuant to Section 4216.2. The inquiry
5 identification number shall remain valid for not more than 28
6 calendar days from the date of issuance, and after that date shall
7 require regional notification center revalidation.

8 ~~(f)~~

9 ~~(g)~~ “Local agency” means a city, county, city and county,
10 school district, or special district.

11 ~~(g)~~

12 ~~(h)~~ “Operator” means any person, corporation, partnership,
13 business trust, public agency, or other entity ~~which~~ ~~that~~ owns,
14 operates, or maintains a subsurface installation. For purposes of
15 Section 4216.1, an “operator” does not include an owner of real
16 property where subsurface facilities are exclusively located if
17 they are used exclusively to furnish services on that property and
18 the subsurface facilities are under the operation and control of
19 that owner.

20 ~~(i)~~ “*Qualified person*” means a person who has completed a
21 *training program on locating subsurface installations that is*
22 *recognized by the Division of Occupational Safety and Health*
23 *and the Occupational Safety and Health Standards Board.*

24 ~~(h)~~

25 ~~(j)~~ “Regional notification center” means a nonprofit
26 association or other organization of operators of subsurface
27 installations ~~which~~ ~~that~~ provides advance warning of excavations
28 or other work close to existing subsurface installations, for the
29 purpose of protecting those installations from damage, removal,
30 relocation, or repair.

31 ~~(i)~~

32 ~~(k)~~ “State agency” means every state agency, department,
33 division, bureau, board, or commission.

34 ~~(j)~~

35 ~~(l)~~ “Subsurface installation” means any underground pipeline,
36 conduit, duct, wire, or other structure, except nonpressurized
37 sewerlines, nonpressurized storm drains, or other nonpressurized
38 drain lines.

39 SEC. 2. Section 4216.2 of the Government Code is amended
40 to read:

1 4216.2. (a) (1) Except in an emergency, ~~every~~ any person
2 planning to conduct any excavation shall contact the appropriate
3 regional notification center, at least two working days, but not
4 more than 14 calendar days, prior to commencing that
5 excavation, if the excavation will be conducted in an area ~~which~~
6 *that* is known, or reasonably should be known, to contain
7 subsurface installations other than the underground facilities
8 owned or operated by the excavator and, if practical, the
9 excavator shall delineate with white paint or other suitable
10 markings the area to be excavated.

11 (2) *If the proposed excavation is within 10 feet of a*
12 *high-priority subsurface installation, the excavator and the*
13 *subsurface installation owner or operator's representative shall*
14 *conduct an onsite meeting to determine any action or activity*
15 *required to verify the location of that installation.*

16 (b) Except in an emergency, every excavator covered by
17 Section 4216.8 planning to conduct an excavation on private
18 property may contact the appropriate regional notification center
19 if the private property is known, or reasonably should be known,
20 to contain ~~a subsurface installations installation~~ other than the
21 underground ~~facilities facility~~ owned or operated by the
22 excavator and, if practical, the excavator shall delineate with
23 white paint or other suitable markings the area to be excavated.

24 (c) The regional notification center shall provide an inquiry
25 identification number to the person who contacts the center
26 pursuant to this section and shall notify any member, if known,
27 who has a subsurface installation in the area of the proposed
28 excavation. An inquiry identification number may be validated
29 for more than 28 days when mutually agreed between the
30 excavator and any member operator so notified that has a
31 subsurface installation in the area of the proposed excavation;
32 and, it may be revalidated by notification to the regional
33 notification center by the excavator prior to the time of its
34 expiration.

35 (d) A record of all notifications by excavators and operators to
36 the regional notification center shall be maintained for a period
37 of not less than three years. ~~The records~~ *record* shall be available
38 for inspection by the excavator and any member, or their
39 representative, during normal working hours and according to

1 guidelines for inspection as may be established by the regional
2 notification centers.

3 (e) As used in this section, the delineation is practical when
4 any of the following conditions exist:

5 (1) When delineating a prospective excavation site with white
6 paint could not be misleading to those persons using affected
7 streets and highways.

8 (2) When the delineation could not be misinterpreted as a
9 traffic or pedestrian control.

10 (3) Where an excavator can determine the exact location of an
11 excavation prior to the time an area has been field marked
12 pursuant to Section 4216.3.

13 (4) Where delineation could not be construed as duplicative.

14 (f) Where an excavator makes a determination that it is not
15 practical to delineate the area to be excavated, the excavator shall
16 contact the regional notification center to advise the operators
17 that the excavator shall identify the area to be excavated in
18 another manner sufficient to enable the operator to determine the
19 area of the excavation to be field marked pursuant to Section
20 4216.3.

21 SEC. 3. Section 4216.3 of the Government Code is amended
22 to read:

23 4216.3. (a) (1) Any operator of a subsurface installation
24 who receives timely notification of any proposed excavation
25 work in accordance with Section 4216.2 shall, within two
26 working days of that notification, excluding weekends and
27 holidays, or before the start of the excavation work, whichever is
28 later, or at a later time mutually agreeable to the operator and the
29 excavator, locate and field mark the approximate location and, if
30 known, the number of subsurface installations that may be
31 affected by the excavation to the extent and degree of accuracy
32 that the information is available either in the records of the
33 operator or as determined through the use of standard locating
34 techniques other than excavating, otherwise advise the person
35 who contacted the center of the location of the operator's
36 subsurface installations that may be affected by the excavation,
37 or advise the person that the operator does not operate any
38 subsurface installations that would be affected by the proposed
39 excavation.

1 (2) *Only a qualified person shall perform subsurface*
2 *installation locating activities.*

3 (3) *The best available technology shall be used to locate the*
4 *subsurface installations.*

5 (4) *The operator of a high-priority subsurface installation*
6 *shall maintain and preserve all plans for those subsurface*
7 *installations that may be affected by the proposed excavation.*

8 (b) Every operator of a subsurface installation who field marks
9 the location of a subsurface installation shall make a reasonable
10 effort to make field markings in conformance with the uniform
11 color code of the American Public Works Association.

12 (c) If, at any time during an excavation for which there is a
13 valid inquiry identification number, an operator's field markings
14 are no longer reasonably visible, the excavator shall contact the
15 appropriate regional notification center. The regional notification
16 center shall contact any member, if known, who has a subsurface
17 installation in the area of the excavation. Upon receiving timely
18 notification or renotification pursuant to this subdivision, the
19 operator shall re-locate and re-mark, within two working days,
20 those subsurface installations ~~which~~ *that* may be affected by the
21 excavation to the extent necessary, in conformance with this
22 section.

23 (d) The excavator shall notify the appropriate regional
24 notification center of the failure of an operator to comply with
25 this section. The notification shall include the inquiry
26 identification number issued by the regional notification center.
27 A record of all notifications received pursuant to this subdivision
28 shall be maintained by the regional notification center for a
29 period of not less than three years. ~~The records~~ *record* shall be
30 available for inspection pursuant to subdivision (d) of Section
31 4216.2.

32 SEC. 4. Section 4216.4 of the Government Code is amended
33 to read:

34 4216.4. (a) The excavator shall determine the exact location
35 of subsurface installations in conflict with the excavation by
36 excavating with hand tools within the area of the approximate
37 location of subsurface installations as determined by the field
38 marking provided in accordance with Section 4216.3 before
39 using any power-operated or power-driven excavating or boring
40 equipment within the approximate location of the subsurface

1 installation, except that power-operated or power-driven
2 excavating or boring equipment may be used for the removal of
3 any existing pavement if there are no subsurface installations
4 contained in the pavement. If there is an express written mutual
5 agreement between the operator, or operators, and the excavator,
6 the excavator may utilize vacuum excavation devices, or
7 power-operated or power-driven excavating or boring equipment
8 within the approximate location of a subsurface installation and
9 to any depth.

10 (b) If the exact location of the subsurface installation cannot
11 be determined by hand excavating in accordance with
12 subdivision (a), the excavator shall request the operator to
13 provide additional information to the excavator, to the extent that
14 information is available to the operator, to enable the excavator
15 to determine the exact location of the installation.

16 (c) *If the excavator determines there is a discrepancy between*
17 *field markings and what is shown on the project plans or if the*
18 *excavator determines a subsurface installation has not been*
19 *marked or marked in the wrong location, the regional*
20 *notification center shall provide the excavator with information*
21 *on how to directly contact the subsurface installation operator.*

22 (d) *When the excavation or boring operations approach the*
23 *approximate location of a subsurface installation, the exact*
24 *location of the installation shall be determined by safe and*
25 *acceptable means that will prevent damage to the installation.*

26 (e) *An excavator discovering or causing damage to an*
27 *underground facility shall immediately notify the facility owner*
28 *or operator or the oncall center.*

29 SEC. 5. Section 4216.7 of the Government Code is amended
30 to read:

31 4216.7. (a) In the case where an excavator has failed to
32 comply with the notification requirements of Section 4216.2 and
33 the requirements of Section 4216.4, the excavator shall be liable
34 for any claim for damages to the subsurface installation arising
35 from the excavation, by an owner or operator who has complied
36 with the requirements of Section 4216.1 and Section 4216.3, to
37 the extent ~~that~~ the damage was proximately caused by the
38 excavator's failure to comply. This subdivision shall not affect
39 claims including, but not limited to, third-party claims; brought

1 against the excavator by other parties for damages arising from
2 the excavation.

3 (b) In the case where an owner or operator of a subsurface
4 installation has failed to comply with the regional notification
5 center system requirements of Section 4216.1, that owner or
6 operator shall forfeit his or her claim for damages to his or her
7 subsurface installation arising from the excavation against an
8 excavator who has complied with the requirements of Section
9 4216.2 to the extent damages were proximately caused by the
10 owner's or operator's failure to comply. This subdivision shall
11 not affect claims including, but not limited to, third-party claims,
12 brought against the excavator by other parties for damages
13 arising from the excavation.

14 (c) In the case where an owner or operator of a subsurface
15 installation receives timely notification of proposed excavation
16 work pursuant to Section 4216.2 but fails to comply with
17 subdivision (a) of Section 4216.3, that owner or operator shall
18 forfeit his or her claim for damages to his or her subsurface
19 installation arising from the excavation against an excavator who
20 has complied with the notification requirements of Section
21 4216.2 to the extent damages were proximately caused by the
22 owner or operator's failure to comply. This subdivision shall not
23 affect claims including, but not limited to, third-party claims;
24 brought against the excavator by other parties for damages
25 arising from the excavation.

26 (d) *Any operator that fails to mark, locate, or otherwise*
27 *provide the position and number of his or her subsurface*
28 *installations that may be affected by a planned excavation or*
29 *demolition shall be liable for any costs, labor, parts, equipment,*
30 *and personnel downtime incurred by an excavator damaging a*
31 *facility owned, operated, or controlled by the operator.*